Supreme Court, U.S.
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IN THE

Supreme Court of the United States

VIC FEDOROV
68 Laurel Road
Princeton, N.J. 08540
(609) 921-6561

Petitioner

v.

MICHAEL BLOOMBERG; THE CITY OF NEW YORK

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Court

PETITION FOR WRIT OF CERTIORARI

QUESTIONS PRESENTED

1. Is the ninth amendment a logical tautology?
2. Can the ninth amendment be read as "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people" *in court*, because court is where rights are retained?
3. Is compromise important to retaining rights?
4. Does the ninth compel courts to consider solutions that reconcile rights?
5. Why do we have an unrecognized logical tautology?
6. How is the ninth compared to the right to petition for redress of grievance?
7. Should the ticketing of alcohol stop in return for a reduction of noise?
8. Are compromises like this a form for other rights?
9. Does NYC Administrative Code violate the 10th amendment?
10. Should a judicious use of alcohol be promoted?
11. Does an ordinance disparaging alcohol unduly inhibit Free Assembly?
12. Is the ordinance against alcohol cruel and unusual, the way it is now?

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OPINIONS CITED

Cited is the decision for the second circuit court of appeals to dismiss my case on motions, pursuant to the limited rights of *Pro Se*, as frivolous, filed and entered September 15th, 2005. Also cited is the lower court dismissal of my case *sua spontua* filed October 15th 2004 and entered October 25th 2004 and the docket number and judge only came with the order for dismissal.

The petition for panel rehearing that is denied October 19th. Reference to the case being accepted at the second circuit court of appeals is cited, of January 27th, 2005. And the response to my case arguing that the right to petition the government to redress grievance should extend into a fair timetable for the filing of pleadings, and discovery and motions, by the Chief Judge of the Second Circuit, is cited as dismissing my complaint on August 18th, 2005.

I also cite a letter from the district *pro se* clerk discouraging the filing of papers until a docket number and judge is received alerting me the case is under judicial review.

STATEMENT REGARDING JURISDICTION

This case was dismissed on motions in the second circuit on September 15, 2005. This petition for a panel rehearing was denied on October 19, 2005.

I believe since this process is called a "petition," it is within my first amendment right to petition the government to redress grievance. To be able to exercise this right, according to the Federal Rules of Appellate Procedure rule 41(d)(2) **Staying the mandate pending petition for certiorari,** a motion to stay the mandate must be made within 7 days of an order on a petition for panel rehearing, which I did before the panel rehearing was denied on Oct. 19, 2005.

United States Section Code Title 28 § 1254(1) protects this right.

On January 30th a letter was dated alerting me I had 60 days to correct the mistakes and resubmit my petition for a writ of certiorari.

CONSTITUTIONAL PROVISIONS, ORDINANCES

There are four constitutional amendments to which I make reference, two references to Article 3 of the Constitution, and an ordinance from New York City's Administrative Code.

Regarding the Constitutional provisions: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish." Article III Section 1

"The judicial power shall extend to all cases, in law and equity, arising under this Constitution." Article III Section 2

Regarding the amendments I refer to: "Congress shall make no law .... abridging ... the right of the people peaceably to assemble and to petition the government for a redress of grievances." Amendment I

"Excessive bail shall not be required ... nor cruel and unusual punishments inflicted." Amendment VIII

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Amendment IX

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." Amendment X

Regarding an ordinance of New York City's Administrative Code: "No person shall drink or consume an alcoholic beverage, or possess, with intent to drink or consume, an open container containing an alcoholic beverage in any public place except at a block party, feast, or similar function for which a permit has been obtained." New York Administrative Code 10-125(b)

A concise statement of the case setting out facts material to the consideration of the questions, and containing the basis for federal jurisdiction in the court of first instance.

In October 2003, I was sitting on a bench on Central Park West near 73rd Street in NYC, quietly drinking a beer, when four police officers came out of an unmarked car and gave me a ticket. I was

running for local office in Princeton, N.J., at the time on a platform that specified the sentiments I see in the tenth amendment of reserving powers for the state or the people, not the local elect, and advocated some form of free assembly as a form of local self-rule.

Naturally I was quite prone, having studied the constitution in this political endeavor, to using the constitution and law to aid the people, and found the ninth amendment to be relevant to this experience.

After asking the magistrate in NYC court, why the ninth amendment does not shield me from such denial and disparagement of right the constitution did not take away and was thus retained, and not getting an answer, I thought it wise to bring up the concern as a federal question.

I always understood the issue involved dealing with the noise revelers made in their display of alcohol use in NYC sometimes up to the early nineties, when Giuliani rescinded such liberty under his "quality of life" campaign. New York City is polite and generally well-behaved enough for me to have never witnessed a ticket for this ordinance,[1] though the number of instances of people using alcohol outside in NYC since the ordinance 10-125 is considerably less that what it was. I will say that even so, a small percentage of people returning from bars late at night are prone to making immature noises.

I brought the question up in Federal District Court because I felt the ninth amendment protected me, by implicitly leading to retaining rights, and enabled me the recourse of federal court. In truth one can't say the ninth amendment is violated, but more, that people can bring up an issue under it, for it is a positive law, not a negative one. It is not violated by the darkness of wrong, but shines light upon the inclinations of good, and thus, that is why I thought the case to be a good "federal question."

Yet incumbent as the ninth amendment, and law, is to how such is used, I was not able to demonstrate precisely that, being dismissed *sua sponte*, meaning upon getting a docket number and judge, which is a requirement for making pleadings and discoveries in the Southern District of New York, my case was dismissed in the same instance, and day. Moreover, Chief Judge Mukasey, who made such decision

[1] Except the day of a Garth Brooks concert in 1995.

(the lower court judge is now Judge Maas), said he would not take any attempt to appeal in good faith.

Upon such climate I complained to the judicial circuit in a forward-looking and corrective way, understanding standing up for your rights wouldn't be called such if you weren't knocked down, and being aware of the problems of power all around, in conformity to media's rendition of the world, being too alone, and an ignorance of the Kingdom of God, a term and testimony I value (Judicial Complaint Docket No. 05-8502). This also raised the question of whether the extent of the right to petition the government to redress grievance extends into the right to make pleadings where the case contends.

In what I call the Machiavellian give and take of the system, to make things a little bit better in a hard system, my case was granted an appeal, but it is difficult to make a case in motions, and in the time for a petition for rehearing.

But my case is about a probationary period, for which the reasons for the restriction upon alcohol are promoted as immaturity and noise, which then would be a duration upon which the people may be tested as to their relation to appropriate behavior, and there able to have been instilled a wise spirit about alcohol.[2] Not only are restrictions that don't serve the purpose of improving necessary behavior unusual: the notion of society being punished or restricted aggregately for the misdeeds of a few, seems a principle that can work itself out to positive end.

CONTENTIONS

> ***"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."***

Denial and disparagement of a right measures how retained a right is. If a right is retained, it is not denied or disparaged. If a right is denied or disparaged, it has not been effectively retained. The recognition of a logical tautology is the capstone to this case.[3]

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[2] Sparta (and other city-states) made laws designed to improve the public.
[3] Statement that is true no matter what (*American Heritage Dictionary*).

From here we try to retain the right (such process can exist without the ninth amendment). In the courts, the opportunity is provided to examine solutions and proposals that balance the reasons for restrictions with the ability to practice liberty.

The capstone supports an even simpler and clearer, active, sense of the positive element of the ninth amendment, which I enunciate this way: "The rights enumerated in the Constitution shall not be construed to deny or disparage others retained by the people *(in court)*," *through salubrious measure*. Courts are where rights are retained. The italicized words are not necessary to signify, but indicate, the sense of the ninth amendment I am trying to share. The word "shall" changes to "can't" through this process. Denial and disparagement isn't the issue. Solutions that retain rights are. This affirms that if the right is retained through the solution, the right will be less denied or disparaged. I maintain this analysis is historical enough to compel the scrutiny of the courts, because it could pave the way for a great deal of creative remedies to current denials and is the effective and intended use of the ninth amendment.

This compromise is usually contingent on improving the behavior of the people. Knowing that the drinking age may go down if the underaged reduce the number of drunk driving incidents may motivate the underaged to more maturity.[4] Knowing maintaining the allowance of alcohol outside in a city is contingent upon peace and quiet, may make the people more mature about alcohol.[5,6] Knowing that police cameras and curfews in parks and crime-prone places may be taken away if the community spirit can reduce crime, and may increase rapport and behavior. Liberty is not a right, but the chance to compromise should be pronounced.

Liberty is based upon maturity. Individuals and societies have levels of maturity. Maturity can reduce restriction by an awareness of the greater right the restriction has in sight (safety, quiet). This understanding teaches retaining rights, broadens rapport between

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[4] Movement to lower the drinking age in Vermont.

[5] Ordinance ticketing outdoor alcohol under "noise-complaint" category of NYC Administrative Code.

[6] Savannah seemed to combine politeness with alcohol outside. Brussels overly encourages alcohol outside.

government and the people, and treats people as the political entity they traditionally are, by encouraging their own destiny.

To repeat: the logical tautology contains two options. (A retained right will not be denied, or the failure to retain a right will result in future denial). It is only through the courts we can see which path will be traveled: depending on the goodness of proposed solution. So we seek resolve regarding the ninth amendment and particular solution.

Forgetting, the reasons, why there are restrictions, upon society, might be cruel and unusual, punishment. Though restrictions merely deny or disparage, and for good cause, restriction's point is to emend behavior and mandate or motivate improvement. Even education can be seen to exist because the people don't seek to educate themselves enough (*Petrey v. Flaugher* D.C. Ky 1981, 505 F.Supp 1087). Why alcohol is now allowed outside in NYC is lost. The whole sense of what understanding of alcohol is required for it to be allowed outside is forgotten. That's cruel because the reason for punishment or restriction or denial or disparagement, should always be known; and unusual, because punishment/restriction usually does not go on forever or capriciously.[7]

Four ways happen, in cases when the ninth amendment is invoked. One is the ninth amendment is called not a source of rights (*Minority Police Officers Assn of South Bend v. City of South Bend, Ind.*, D.C. Ind 1983 555 F. Supp 921) (though disparaged rights imply retained rights): the denial of a right is not a constitutional violation, but real politic; and the first amendment allows the court to examine grievance and consider the issues involved on their own. In these cases, the plaintiff rarely has proposed a solution to the situation. The army private that wants long hair didn't try to convince the army of the merits of a long-haired brigade (*Anderson v. Laird*, CA III 1971 437 F.2d 912). Too often no attempt is made to meet the criteria the restriction envisions. The debate between universities and the army seeps aside the issues of "homosexuality." The cause of making crack-cocaine laws more proportionate didn't argue that the high from crack-cocaine is contingent upon the fear of draconian punishment, or that the great pressure of long jail

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[7] Our penal system has set sentences, parole opportunities and inculcates reasons for punishment.

sentences causes so much pressure as to disrupt behavior and actually have the effect of reverse psychology (*USA v. Marvin Spencer* C.A. 7th 1998). The movement to lower the drinking age in Vermont must provide the motivation to naturally assert itself, as a movement, to reduce the drunk driving of that age-group.

The second is that the constitution and laws are looked at to see if a right is retained. The second amendment is debated as to allowing individuals, not militias, guns (*San Diego County Gun Rights v. Reno* 98 F.3d 1121). The disproportion regarding federal laws involving crack-cocaine are weighed against state constitutions insuring proportionate punishment (*USA v. Marvin Spencer* C.A. 7th 1998). The right of married couples to contraceptives is seen as within the penumbra of the Bill of Rights (*Griswold v. Connecticut Supreme Court*, 1965). Thus this invocation of the ninth hinges on the court's determination of whether a right is already retained. But, this makes the ninth amendment redundant because the issue is in the body of law that already exists. The right to choose to not reproduce is greater than the right to privacy. The Hatch Act should examine the benign quality to political activity, and address complaints of political bias; rather than restrict.

Then there is the kind of case where the rights aimed for by the restriction are balanced by the rights aimed for by the liberty sought. Thus, if a curfew is shown to not be necessary, it must be removed (*City of Wadsworth v. Owens Ohio Mun.* 1987, 536N, F.2d 674 Ohio Misc. 2d1). If smoking violates employee health the criterion is achieved that makes that right greater than the right to smoke in a bar. Homosexuality in the navy is not a right (*Dronenburg v. Zech* 1984 741 F.2d, 1388 239 U.S. App. D.C. 229); long hair, in general, is (*Stradley v. Anderson* D.C. Neb 1972 349 F.Supp 1120).

Courts should care about truth, not law. Truth is the parent of law.

Then there is the kind of case I believe was intended, whereby a compromise such as alcohol outside, is allowed, if the people can demonstrate the incentive behind the deal (lowering the drinking age in return for first demonstrating accident reduction), allowing alcohol outside if such liberty and respect can decrease noise. Treating people like adults this way, may reduce noise across the board and teach that liberty is contingent upon behavior. This is my